IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5981 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOTIBHAI HIRABHAI SAMAND

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioners No. 1-2

MR HASMUKH PATEL AGP for Respondents No. 1-3

DELETED for Respondents No. 4-5

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 21/03/2002

C.A.V. JUDGEMENT

1. The petitioners have, by filing this writ petition under Article 226 of the Constitution of India challenged an order dated 16/18.9.2000 passed by respondent No.2, which is at Annexure-C. By this impugned order, an

appointment of Shri Purusottambhai M. Marvadi, who was appointed as an Inquiry Officer for making inquiry of Surendranagar District Co-operative Dudh Udapadak Sangh Limited (For short "the Union") with regard to alleged misdeed of making unnecessary expenses of Rs.1,61,147/-[Rupees One Lac Sixty One Thousand One Hundred Fourty Seven Only] was cancelled and appointment of respondent No.3 is made, in place of said Shri Purusottambhai M. Marvadi. By this writ petition, the petitioners have prayed to issue writ of mandamus or appropriate writ, order or direction to quash and set aside the aforesaid order dated 16/18.9.2000 passed by respondent No.2 and further to issue a writ of mandamus or appropriate writ, order or direction declaring that the respondent No.2 has no power, authority or jurisdiction to take action against the co-directors i.e. petitioners in as much as, the respondent No.3 being one of the members of the Board of Directors of the aforesaid Union.

2. The facts leading to this present petition in a nutshell are as follows :-

2.1 The Union is a Co-operative Society duly registered under the provisions of the Gujarat Co-operative Society Act, 1961 (For short "the Act"). The Union is a Federal Co-operative Society at the District level and is recognized as the Specific Co-operative Society within the meaning of Section 74(c) of the Act. The Union has got registered and sanctioned its Byelaws, which provide internal management of the Union. As per Bye-law No.19 of the Byelaws of Union, the Board of Directors of the Union is constituted of 17 Directors, out of which 12 persons are from the Chairmen of different Mandalis of the Union. One of the 17 Directors of the Board of Directors is the District Registrar Co-operative Societies i.e. respondent No.3. We are not concerned with the other Directors. The respondent No.3 is ex-officio member as director on that Board of Directors of the Union and he enjoys the same rights and liabilities in the Union and, therefore, respondent No.3 can enjoy the same privileges which other Directors enjoy. At the same time, the District Registrar shoulders the same liabilities.

2.2 The petitioner No.1 is an ex-director and the president of the Union. The petitioner No.2 is the Manager of the Union, whose services have now been terminated, after placing him under suspension.

2.3 As alleged by the respondents, the Union had made

expenses of Rs.1,61,147/-- [Rupees One Lac Sixty One Thousand One Hundred Fourty Seven Only] for function of dedicating Dairy at Vadhavan to the Union which was held on 14.12.1997. In exercise of the powers conferred under Section 93 of the Act, the respondent No.2 passed an order directing to hold an inquiry for which, one Shri Purusottambhai M. Marvadi was appointed as an Inquiry Officer by an order dated 1.10.1999 of respondent No.2. As it reveals from the papers of the case, said Shri Purusottambhai M. Marvadi could not start to hold inquiry under Section 93 of the Act, till 15.9.2000. Therefore, respondent No.2 passed an order dated 16/18.9.2000 (Annexure-C) by which, an appointment of Shri Purusottambhai M. Marvadi has been cancelled and in his place respondent No.3 is appointed as an Inquiry Officer for the said inquiry. It is this order at Annexure-C, is challenged in this writ petition.

3. At the initial stage, on 27.7.2001, this Court (Coram : K.M.Mehta,J.) passed an order directing office to issue notice returnable on 10.8.2001 and simultaneously, this Court granted an ad-interim relief in terms of para-26(C). Para-26(C) is a prayer for staying the implementation, execution and operation of the aforesaid impugned order (Annexure-C) passed by respondent No.2 and also to refrain the respondent No.3 from taking any action against the petitioners.

4. The respondent No.3 has appeared and filed affidavit-in-reply opposing the admission of this writ petition as also a grant of an ad-interim relief. On 27.11.2001, this Court (Coram : A.M.Kapadia,J.) granted permission to the petitioners to delete the names of the respondent Nos.4 and 5 and accordingly, petitioners have deleted the names of the respondent Nos.4 and 5 and after hearing the learned advocate for the petitioners and learned AGP issued a "Rule". By this order dated 27.11.2001 earlier order of ad-interim relief granted at the time of issuance of notice, was made absolute till further orders.

5. Heard Mr.B.M.Mangukia, learned advocate for the petitioners and Mr.Hasmukh Patel, learned AGP for the respondent Nos.1 to 3. Read the impugned order (Annexure-C) and affidavit-in-reply dated 15.9.2001 filed by the respondent No.3.

6. Mr.B.M.Mangukia, learned advocate for the petitioners has argued that as per bye-law No.19 of the Byelaws of the Union, there are 17 directors on the Board of Directors. Annexure-A is a list of 17 directors

comprising the Board of Directors. Out of these 17 directors, 12 directors are elected from Chairmen of different Mandalis of the Union. The District Registrar Co-operative Societies i.e. respondent No.3 is also one of the Directors on the Board of Directors of the Union meaning thereby the District Registrar Co-operative Societies is an ex-officio Director on the Board of Directors of the Union. It is the case of the petitioners that District Registrar Co-operative Societies is enjoying the same rights, which are being enjoyed by other elected Directors and the District Registrar is also equally responsible and liable for the liabilities incurred by the Board of Directors, as he is also one of the Directors. Mr.B.M.Mangukia has argued that he wants to make it clear that this petition is not preferred to challenge an order passed under Section 93 of the Act by the respondent No.2 ordering to hold an inquiry into the matter of expenses made by the Union for holding a function on 14.12.1997 for dedicating a Dairy at Vadhavan to the Union. He has argued that an order No.DAM-0142-GH-1934 of 1999 dated 1.10.1999 of the respondent No.2, which is referred to at Sr.No.1 in preamble of impugned order at Annexure-C, is not at all challenged by the petitioners. He has argued that respondent No.2 by passing an impugned order dated 16/18.9.2000 (Annexure-C) has cancelled an earlier appointment of Shri Purusottambhai M. Marvadi, as an Inquiry Officer for holding an inquiry contemplated under Section 93 of the Act. By an impugned order, the respondent No.2 has appointed respondent No.3 as an Inquiry Officer in place of Mr.Purusottambhai M. Marvadi for the said inquiry. It is his argument that when respondent No.3 himself is one of the Directors on the Board of the Directors of the Union, the very same Director cannot be appointed as an Inquiry Officer against him and other co-directors. If, this order is allowed to operate and give effect then it can be said that respondent No.3, who is appointed as an Inquiry Officer will be a Judge against his own cause, for inquiry and accordingly this case is a case of peculiar facts, wherein a Judge is going to hold an inquiry against himself and, therefore, the principles of natural justice are violated. He has argued that in view of this factual position, the impugned order (Annexure-C) cannot be allowed to operate against all the Directors of the Union, including the respondent No.3, and it should be quashed and set aside.

7. Mr.Hasmukh Patel, learned AGP for the respondent Nos.1 to 3 has, by placing reliance on affidavit of one Shri D.B.Patel, District Registrar, Surendranagar, argued

that an inquiry is not against all the Directors on the Board of Directors of the Union. He has by reading internal page-5 of affidavit-in-reply of Mr.D.B.Patel argued that an inquiry is ordered to be held to determine the responsibility of the then Chairman Shri Motibhai Hirabhai Samand (petitioner No.1) and Manager Shri Naginbhai Devchandbhai Patel (petitioner No.2) for unnecessary expenses of Rs.1,61,147/- and, therefore, when an inquiry is initiated under Section 93 of the Act for misdeed committed by the present petitioners only, it cannot be said that the principles of natural justice are violated and, therefore, this Court should not exercise its writ jurisdiction under Article 226 of the Constitution of India, so lightly to set aside the impugned order.

8. I have given thoughful consideration to the rival submissions made by both the parties. It is not in dispute that the District Registrar Co-operative Societies, Surendranagar is one of the Directors on the Board of Directors of the Union. As per Item No.19.1.2 of Annexure-A the District Registrar Co-operative Societies is one of the Directors. As submitted by Mr.B.M.Mangukia, the petitioners have not challenged an order dated 1.10.1999 of the respondent No.2 by which, an inquiry is ordered to be held under Section 93 of the Act. At the initial stage, when such order directing to hold inquiry under Section 93 of the Act, was passed, one Shri Purusottambhai M. Marvadi was appointed as an Inquiry Officer for holding the said inquiry. To that extent, there is no challenge from the side of the petitioners. After passing an order dated 1.10.1999, Shri Purusottambhai M. Marvadi could not start to hold inquiry, till 15.9.2000 for reasons best known to Shri Purusottambhai M. Marvadi or respondent No.2. Thereafter, respondent No.2 passed an impugned order dated 16/18.9.2000 (Annexure-C) by which an appointment of Shri Purusottambhai M. Marvadi, as an Inquiry Officer was cancelled and in his place the District Registrar Co-operative Societies, Surendranagar is appointed as an Inquiry Officer. These are undisputed facts.

9. The only contention is required to be examined as to whether a person can examine the subject matter consisting a cause for inquiry to which, he himself was a party. Mr.B.M.Mangukia has argued that admittedly, a function was held on 14.12.1997 for dedication of a Dairy at Vadhavan to the Union for which a decision was taken by the Board of Directors of the Union. It is not the case of respondent No.3 that he was not a party to the decision whereby, it was decided by Union to hold a

function on 14.12.1997 and, therefore, this is a case in which the respondent No.3 will examine the cause to which, he was a party. This is nothing but a clear violation of principle of natural justice.

9. Mr.B.M.Mangukia, learned advocate for the petitioners has cited two authorities on this point. First is a case of Shankarbhai Devjibhai Patel and Others v/s. Sabarkantha Jilla Sahakari Kharid Vechan Sangh Ltd. and Others, reported in 1984 G.L.H. 498. In this cited case, respondent No.2 was Assistant District registrar, Co-operative Societies, Sabarkantha and he was a member of the Managing Committee of the Society at the relevant time. He was a party to the decision taken by the Managing Committee. It was the case of the respondents that stainless-steel utensils like Tapeli (cooking pot) were given to the staff members and to the ordinary members of the Society on the occasion of Silver Jubilee. An amount of Rs.18,839.28 paisa was spent from the "Sahakar Prachar Fund" and an amount of Rs.96,035.75 paisa was spent from "customer bonus fund". In that case an inquiry was ordered to be held under Section 93 of the Act and for said inquiry, the respondent No.2 appointed one Shri B.C.Vora as an Investigating Officer for carrying out the investigation. The petitioners were called upon to explain the allegations made against them. The petitioners replied to the same. After affording an opportunity of being heard to them and after following due the procedure in accordance with law, the Investigation Officer passed an order dated August 10, 1979, by which all the members of the Committee were liable for the aforesaid two amounts.

9.1 The petitioners carried the matter further to the Gujarat State Co-operative Tribunal by preferring Appeals being Appeals No.152 and 153 of 1979. The Tribunal after hearing the parties held that the order passed by the Investigating Officer was legal and valid and ultimately dismissed the appeals preferred by the petitioners by its common order dated June 18, 1981.

9.2 The petitioners, thereafter, preferred Special Civil Application under Article 227 of the Constitution of India and have challenged the legality and validity of the aforesaid orders passed by the lower authorities. As said earlier, respondent No.2 was Assistant District Registrar, Co-operative Societies, Sabarkantha and he was one of the members of the Managing Committee of the Society. The Investigating Officer Shri B.C.Vora was appointed as an Investigating Officer by this very respondent No.2 to investigate on his behalf.

9.3 This Court has held that this would amount to appointing a person as Judge or as an Inquiry Officer in his own cause. This is clearly against the principles of natural justice. One cannot be a Judge in his own cause.
9.4 In that cited case, ultimately, this Court held that an appointment of Shri B.C.Vora as an Investigation Officer was clearly against the principle of natural justice and, therefore, that appointment was bad-in-law. This Court further held that on this count the order passed by him on August 18, 1979 by which Shri B.C.Vora was appointed as an Investigating Officer was held to be nullity and consequently the order passed by the Tribunal in appeal would also amount to the confirmation of nullity and nullity confirmed or modified remains nullity. In the result, the petition was allowed. The orders passed by the lower authorities i.e. the Investigating Officer and the Tribunal, Ahmedabad, produced at Annexures B and C dated August 18, 1979 and June 18,1981 respectively, were quashed and set aside.

9.5 Here in this present case, the respondent No.3 was one of the members of the Board of Directors of the Union vide Item No.19.1.2 (Annexure-A) (Page-19) and by impugned order passed by respondent No.2 which is at pages 27-28 (Annexure-C) he (i.e. respondent No.2) appointed that very respondent No.3 for the inquiry, which was ordered to be held vide order dated 1/10/1999, which is referred to in Item No.1 of preamble of impugned order (Annexure-C). Therefore, this is a case in which, respondent No.3 will make an investigation in the cause to which he himself party and therefore, this case is on better footing than case cited by Mr.B.M.Mangukia because in that case Shri B.C.Vora an Inquiry Officer was appointed by respondent No.2, and respondent No.2 was a member on the Managing Committee of the society.

10. Second is the case of Gujarat State Co-operative Marketing Federation Ltd. v/s. V.H.Parekh and Another, reported in 1995 (1) G.L.H. 857. In this cited case, the petitioner-Gujarat State Co-operative Marketing Federation Limited was one of the Apex level federal co-operative societies and its area of operation was in the entire Gujarat State. The respondent No.1 i.e. Joint Registrar of Co-operative Societies (Marketing), Gujarat State in exercise of his powers conferred on him under Section 86 of the Act passed an order dated 29.11.1982. Section 86 of the Act speaks about the inquiry by the Registrar. The Registrar can pass an order to hold an inquiry into the constitution, working

and final conditions of the Society, sumotu or by authorizing any person in writing in his behalf. Before passing such order under Section 86 of the Act, a show cause notice was issued against the petitioner federation. The petitioner submitted its reply, in reply to the show cause notice.

10.1 In that case, it was found that the Board of Directions of the petitioner - Federation was consisting of elected representatives of marketing and processing co-operative societies of Gujarat State Co-operative Bank Limited and others with some Government nominees. Out of the Government nominees, two officers namely the Registrar of Co-operative Societies, Gujarat State, Ahmedabad or his nominee and the Financial Advisor, Agriculture, Forest & Co-operation Department were ex-officio members on the Board of Directors. It was the case of the petitioner that the Joint Registrar of the Co-operative Societies, Gujarat State, Ahmedabad attended most of the meetings of the Board of Directors of the petitioner-society held during the years 1979-80 and 1980-81. It was further averred that the Board of Directors have always taken unanimous decisions and hardly except on one or two occasions, the Registrar of Co-operative Societies, Gujarat State and another Government nominee had never voted against the resolutions passed in the Meetings of Board of Directors'.

10.2 This Court found that the first respondent who was a sitting Director of Board of Directors of the petitioner-society and who was a party to the initiation of the matters decided by the Board, has passed the impugned order of holding the inquiry. It was contended by the petitioner that the respondent No.1 was attending meetings of the Board of Directors and he had never voted against the decisions taken in the meetings of the Board of Directors of the petitioner-society and he is the same person, who has directed to initiate an inquiry under Section 86 of the Act.

10.3 This Court found that the contentions that the impugned decision of the respondent No.1 directing initiation of the proceedings under Section 86 of the Act is illegal as the respondent No.1 is incompetent as he has been acting as judge on his own cause, has great force and is sustainable in the facts and circumstances of the said case. This Court categorically stated that it is celebrated principles of law that one shall not be a judge on his own cause (nemo in propria causa judex, esse debet) (no one ought to be a judge in his own

cause).

10.4 Ultimately this Court allowed the petition and quashed and set aside the impugned order passed by the respondent No.1 dated 19.11.1982 directing to initiate inquiry of the petitioner-society under Section 86 of the Act.

11. Keeping in mind the aforesaid legal position, this Court finds that in the present case, respondent No.3 was one of the members of the Board of Directors of the Union. The respondent no.3 has filed an affidavit dated 15.9.2001, which is on record at pages 35 to 39. The respondent No.3 has nowhere stated in his affidavit that he was not a party to the decision taken by the Board of Directors to make expenses for holding a function of formal handover of the plant to the Union in which, the Hon'ble Minister presided over and other Hon'ble Minister had remained present.

11.1 Before passing an impugned order, by respondent No.2 a show cause notice under Section 93 of the Act was issued against the petitioners to show cause as to why the expenditure is incurred in organizing the function, should not be recovered from the petitioners. Admittedly, the petitioner No.1 is an ex-director and president of the Union and the petitioner No.2 is the Manager of the Union. Though respondent No.3 is a Government Nominee, a member on the Board of Directors of the Union, the respondent No.2 passed an order to hold an inquiry of the Union under Section 93 of the Act and for this inquiry by passing impugned order Annexure-C appointing respondent No.3 as an Inquiry Officer. And therefore, respondent no.3 will be an Inquiry Officer for his own cause because he was a party to a decision to organize a function of formal handover of the plant to the Union. Therefore, this is a clear cut case of violation of principles of natural justice because respondent No.2 has ordered to make an investigation into the matter of the inquiry under Section 93 of the Act by respondent No.3 for a cause to which he himself is a party and, therefore, applying the ratio of each of aforesaid two authorities, this case squarely falls within the principle undelying maxim "nemo in propria causa judex, esse debet".

12. Mr.Hasmukh Patel, learned AGP for the respondent Nos.1 to 3 has by reading an affidavit more particularly contents of page-34 argued that special report of Audit was submitted by Special Auditor (Milk), Audit Department, Surendranagar and by that report, it was held

that the then Chairman Shri Motibhai Hirabhai Samand and Manager Shri Naginbhai Devchandbhai Patel are responsible for a sum of Rs.1,61,147/-- and, therefore, an inquiry order under Section 93 was limited to only for two petitioners and not for others and, therefore, the question does not arise to equate this case with the aforesaid two decisions. In short, it is an attempt of learned AGP that pursuant to report of Special Auditor, an inquiry was ordered only against the petitioners and not against the other members of the Board of Directors of the Union. This arguments are contrary to facts on the record. If we read the preamble of impugned order (Annexure-C), we find that an inquiry was ordered to be held under Section 93 of the Act to determine as to who were responsible for financial loss caused to the Union by organizing a formal function of dedication of Dairy at Vadhavan to the Union. Thus, inquiry is not ordered to be held against particular two persons namely petitioners. An inquiry is of a general in nature and Inquiry Officer has to decide as to who is responsible for such financial loss. Naturally, the decision for making expenditure for such function is being taken in the meeting of the Board of Directors and, therefore, an inquiry is targeted against all the members of the Board of Directors including respondent No.3 himself and, therefore, this is a case in which, respondent No.2 has passed an order directing to hold an inquiry into the matter of the Union to which, respondent No.3 himself was a party and, therefore, this is a case in which, the principles of natural justice are violated. In view of this, the impugned order is a nullity order and it cannot be allowed to operate further even for a minute.

12. In view of the discussion made hereinabove, this writ petition deserves to be allowed and accordingly it is allowed. The impugned order (Annexure-C) dated 16/18.9.2000 passed by respondent No.2 i.e. Joint Registrar, Co-operative Societies, Gujarat State, Gandhinagar appointing respondent No.3 as an Inquiry Officer in place of Shri Purusottambhai M. Marvadi is hereby quashed and set aside. It is made clear that an order dated 1.10.1999 of respondent No.2 by which inquiry under Section 93 of the Act is directed to be held, stands as it is. No order as to costs. Rule is made absolute to that extent.

(H. H. Mehta,J.)

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